

ENTERED

September 01, 2016

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**Shelby Brown, Individually and on
behalf of others similarly situated,**

Plaintiff,

VS.

**Production Testing Services,
Inc. and Robert Hoff,**

Defendants.

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**CIVIL ACTION NO. 16-cv-01152**

## ORDER

Pending before the Court is Defendants' Motion to Dismiss Plaintiff's FLSA collective action. **(Instrument No. 9)**. Defendants argue that Plaintiff has not adequately pleaded that he is similarly situated to other putative class members and that he has failed to adequately plead he is a non-exempt worker. Whether a plaintiff is similarly situated is generally considered a more appropriate question for the class certification stage. In addition, Plaintiff alleges at least a facially plausible claim that he was misclassified as exempt from overtime. (Instrument No. 1 at 3); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In light of the foregoing, IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is **DENIED**. **(Instrument No. 9)**.

The Clerk shall enter this Order and provide a copy to all parties.

**SIGNED** on this the 15<sup>th</sup> day of September, 2016, at Houston, Texas.

Wanessa Gomes

**VANESSA D. GILMORE**  
**UNITED STATES DISTRICT JUDGE**